

HEIRS OF DANIEL STAR.

MAY 25, 1842.

Read, and laid upon the table.

Mr. PARMENTER, from the Committee on Revolutionary Claims, submitted the following

REPORT

The Committee on Revolutionary Claims, to whom was referred the petition of E. Thatcher and others, heirs of Daniel Star, deceased, report :

That the petitioners are the children of Daniel Star, who was killed on board the United States ship Trumbull, on the 2d day of January, 1780, in an action with the British ship Watt. Of the fact of his death, as alleged, there is no doubt. Peleg Talman deposes that he was on board the ship Trumbull at the time of the engagement, and lost an arm; that Daniel Star was third lieutenant, and was killed near the deponent. There is other testimony, fully substantiating the truth of his statement.

The petitioners claim arrearages of wages and the allowance of seven years' half pay, promised under the resolution of August 24, 1780, and cite the case of the heirs of Lieutenant Joshua Fanning, who was lost in ship Randolph, as a precedent.

The petition of the heirs of Lieutenant Fanning was before Congress from 1807 to 1836, a period of twenty-nine years, before it was allowed. There was previously a law passed, in 1834, granting seven years' half pay to the daughter of Lieutenant William Barron, who was killed on board the ship Boston, in March, 1778. Both these allowances were made on the same grounds. The report of the committee, January 7, 1831, in favor of the daughter of Lieutenant Barron, after stating the facts of his death and the hardship of the petitioner, proceeds as follows :

"The committee are of opinion that this is a strong case, and that it falls within the principle of the resolution of Congress, adopted on the 24th day of August, 1780. The third clause of that resolution is in these words :

"That the resolution of the 15th day of May, 1778, granting half pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died, or shall hereafter die, in the service, to commence from the time of such officer's death, and continue for the term of seven years; or, if there be no widow, or in case of her death or intermarriage, the said half pay be given to the orphan children of the officer dying as aforesaid, if he shall have left any; and that it be recommended to the Legislatures of the respective States to which such officers belong to make provision for paying the same on account of the United States."

"The committee are aware that, in this clause, no allusion in terms is made to officers of the *navy*; but it should be remembered that, as a distinct and efficient arm of the national defence, the navy was not fully recognised by Congress during the revolutionary war, and that the department itself was not organized until April, 1798. It may with reason, then, be inferred, that individuals engaged in the naval as well as the land service, at that period, were included by Government under one general military head, or that the word *navy*, in the resolution of August, 1780, was accidentally omitted. It could not have been the intention of Congress to make an unfair and invidious distinction between the widows and orphans of those brave men who fell in defence of their country's rights. Later experience favors this construction; for, to say nothing of the act of January, 1813, which expressly provides for the widows and children of officers of the navy or marines killed, or dying of wounds received in the line of their duty, the pension laws of 1792, 1803, 1806, and 1818, apply alike to the soldier and the sailor.

"The committee, therefore, are of the opinion that the half pay of a first lieutenant of a frigate for seven years ought to be allowed to the petitioner, and have accordingly directed a bill to be reported for that purpose."

In relation to this report, which was also readopted in 1833 by the Committee on Revolutionary Claims, the present committee remark: that the resolution of the 24th August, 1780, had not before been construed as applicable to navy officers. Its precise terms, it will be seen, are "officers of the army." Navy officers were entitled to prize money, which was considered a strong inducement to enter the naval instead of the land service. It will be recollected that, during the revolutionary war, the relative strength of the British navy, compared with other European Powers, was altogether different from what it has been for the last forty or fifty years. She had not then attained that superiority upon the ocean which she has since. Hence the chance of success, in captures at sea, was deemed an important object, and the instances are frequent of application to the Continental Congress for leave to fit out private armed ships. The former committees also state that, "as a distinct and an efficient arm of the national defence, the navy was not fully recognised by Congress during the revolutionary war, and that the department was not organized until April, 1798." As to the organization of 1798, Congress did indeed adopt a different plan from that before pursued; but the former committee were altogether in error in supposing the navy was not considered by the Continental Congress "a distinct and efficient arm of the national defence." As early as the year 1775, and during that and the succeeding year, Congress appointed a naval or marine committee, with extensive powers, established general rules for the government of the navy, adopted regulations for the distribution of prize money, ordered the fitting out, under one resolution, of thirteen ships of war, commissioned navy officers of all grades, fixed their rank and pay, appointed navy agents and prize agents for the different sections of the country, and adopted many other measures in relation to the navy. The journals of Congress show that, during every year of the revolutionary war, there was frequent and important legislation on the subject of the navy. The inference, therefore, "that the word *navy*, in the resolution of August, 1780, was accidentally omitted," is, in the opinion of this committee, not warranted by the facts. It was

undoubtedly intended, as has ever been the construction, excepting in a few cases recently, that it should not apply to navy officers, for the reason, as has been mentioned, that they had an advantage over land officers in the matter of prize money.

The argument founded on the act of January, 1813, and on the pension laws, is not applicable to the special promises of half pay and commutation pay, because the pension laws include State troops, militia, and other classes to which the resolutions for half pay and other special grants have never been applied. The pensions provided January, 1813, were to be paid from the navy pension fund, and not from the public Treasury.

However strong may be the feelings of this committee to include the heirs of navy officers within the provisions of the resolution of August 24, 1780, they are constrained to believe it was never so intended. An examination of the claims allowed during the few years that there was an overflowing Treasury shows that there was great liberality on the part of Congress; and several deviations were made from the construction of the resolutions of the Continental Congress, which had always before been considered settled. This committee apprehend that it would be increasing dangerous and erroneous precedents to admit the claims of heirs of navy officers, under the resolution of August, 1780, insomuch that they can see no reason why meritorious State officers and others, who rendered valuable services, should not be placed on the same footing, and thus lead to expenditures, in number and amount, far beyond what could ever have been contemplated.

The committee, therefore, deeming it important to adhere closely to the tenor of the resolutions of the Continental Congress, are of opinion that this claim ought not to be allowed. There is no evidence of any arrearage of monthly pay, and therefore there is no ground for allowance on that account.

undoubtedly intended, as has ever been the construction, excepting in a few cases recently, that it should not apply to navy officers, for the reason, as has been mentioned, that they had an advantage over land officers in the matter of prize money.

The argument founded on the act of January, 1813, and on the pension law, is not applicable to the special promise of half pay and compensation pay, because the pension law includes State troops, militia, and other classes to which the resolution for half pay and other special grants have never been applied. The pension provided January, 1813, were to be paid from the navy pension fund, and not from the public Treasury.

However strong may be the feelings of this committee to include the names of navy officers within the provisions of the resolution of August 31, 1780, they are constrained to believe it was never intended. An examination of the claims allowed during the few years that there was an overhauling Treasury shows that there was great liberality on the part of Congress; and several donations were made from the construction of the resolutions of the Continental Congress, which had always been been considered settled. This committee apprehend that it would be increasing dangerous and erroneous precedents to admit the claims of half of navy officers, under the resolution of August, 1780, inasmuch as they can see no reason why meritorious State officers and others, who rendered valuable services, should not be placed on the same footing, and thus lead to expenditures, in number and amount, far beyond what could ever have been contemplated.

The committee, therefore, deeming it important to adhere closely to the text of the resolutions of the Continental Congress, are of opinion that the claim ought not to be allowed. There is no evidence of any arrears of monthly pay, and therefore there is no ground for allowance on that account.